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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,405	08/27/2001	Kenneth Alan Pieroni	CHMP-102D	5474

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MORLAND C FISCHER
2030 MAIN ST
SUITE 1050
IRVINE, CA 92614

EXAMINER	
GARBER, CHARLES D	

ART UNIT	PAPER NUMBER
2856	

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/939,405	PIERONI ET AL.	
	Examiner	Art Unit	
	Charles D. Garber	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 November 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-28* is/are pending in the application.

4a) Of the above claim(s) *11-18* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments, see page 2 of the communication filed 11/04/2003, with respect to the rejection(s)of claim(s) 19-28 under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of US Patent 4,523,452 to Brayman, US Patent 4,364,261 to Askwith et al. and US Patent 5,996,402 to Harris.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19 and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Brayman (US Patent 4,523,452).

Brayman teaches a method of measuring leaks. The recitation that invention is to be used "in the evaporative system of a motor vehicle" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). Brayman provides pressure source 10 which is a source of gas under pressure connected to a system under test 12 by way of a supply line (18, 14) interconnected

therebetween so as to pressurize the system under test; and a flow rate transducer 28 located in the supply line between the pressure source and the system under test as shown in figure 1. The transducer 28 provides a reading that is indicative of a leak within the system under test (column 2 lines 6-39 especially lines 35-39). The flow rate indicated is compared with predetermined values of "accept" and "reject" leakage rate values in order to determine if the rate is severe enough to rate rejection. The method and system may serve the intended use of determining whether the leak is in need of repair. The instant invention, while referring to an evaporative system of a motor vehicle has not distinguished the instant invention with respect to any particular structural feature or process that would make the instant invention particularly applicable or peculiar to testing of evaporative systems of motor vehicles. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations *Ex parte Masham* 2 USPQ2d 1647 1987).

As for claim 26, Brayman may be used with a system of a motor vehicle under test that is the fuel vapor recovery system as intended by the instant invention.

Claims 27 and 28 are substantively equivalent to claims 19 and 26 as discussed above.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brayman (US Patent 4,523,452 as applied to claim 19 above and further in view of Nielsen (US Patent 2,771,769)

Brayman lacks the gas flow meter is a non-regulating flow meter having a moving ball indicator, the movement of said ball indicator providing a visual reading of the flow of gas under pressure to the evaporative system under test and an indication of whether the evaporative system under test has a leak that is in need of repair.

Nielsen teaches almost any type of flow meter is suitable in a device for testing the fluid tightness of manufactured products. In the practice of the invention Nielsen further teaches "one of a type in which a small, light ball is retained in a tapered glass tube and the flow through the test line affects the vertical position of the ball within the flow meter." (column 1 lines 15, 16, 58-67)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a ball flow meter to test for a leakage as "inspection of the flow meter 30 will indicate to the operator from the position of the little ball 30' ... whether or not there is leakage" (column 3 lines 72-75). The particular position will also give an indication of the severity of the leak and the extent of the remedial action that may be required.

Though the references do not again expressly recite determining need for repair as a consequence of the indication Examiner, such limitation is considered to be an intended use of the invention and does not substantively distinguish the invention over the prior art.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brayman (US Patent 4,523,452) in view of Askwith et al. (US Patent 4,364,261).

Brayman as applied to claim 19 above does not expressly teach the source of gas under pressure is a source of nitrogen gas.

Askwith teaches "the leakage rate testing equipment of this invention is designed to allow leakage testing of valves and piping systems using either gas (air, nitrogen, or other nonflammable gas) or water (or some other clear liquid) by determining the actual flow rate."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use nitrogen as a source of pressure for leak testing because nitrogen is advantageously not flammable.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brayman (US Patent 4,523,452) as applied to claim 19 above and further in view of Malcosky et al. (US Patent 4,551,154).

The reference lacks a unidirectional check valve located in the gas supply line between the gas flow meter and the system under test to prevent the flow of gas in a direction away from the system under test and towards the gas flow meter.

Malcosky teaches check valve 202 between the pipeline 216 (which is a system under test) and flow meter 196. The check valve will prevent the flow of gas in a direction away from the system under test and towards the gas flow meter (see figure 2 and column 7 lines 14-17).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate a check valve between a system under test and a test flow meter in order to prevent back flow of system fluids which may be harmful and may damage or contaminate the test components or escape into the environment.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brayman (US Patent 4,523,452) as applied to claim 19 above and further in view of Davis, II (US Patent 2,698,222).

The reference lacks a gas accumulator located in the gas supply line between the source of gas under pressure and the gas flow meter, the gas accumulator having a chamber within which to dampen fluctuations and pulsations in the flow of gas under pressure from the source thereof.

Davis, II teaches surge tank 106 between a pump 54 and flow meter 111 (see figure 5 and column 10 lines 49-63).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a surge tank or accumulator between a gas source such as a pump and a flow meter in order to insure steady flow of the gases and reduce fluctuations from the gas source.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brayman (US Patent 4,523,452) as modified by Davis, II (US Patent 2,698,222) and applied to claim 23 above and further in view of Dowty (US Patent 2,251,239).

The references lack a check valve coupled to the gas accumulator by which to relieve excessive pressure in the gas supply line between the source of gas under pressure.

Dowty teaches accumulators "ordinarily have" relief valves which are one way valves that activate generally after a predetermined pressure is reached.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a surge tank or accumulator with a relief valve because this is ordinary practice and is done to prevent overcharge and damage to the accumulator.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brayman (US Patent 4,523,452) as applied to claim 19 above and further in view of Harris (US Patent 5,996,402).

Brayman lacks a multi-position selector value located in the gas supply line between the source of gas under pressure and said gas flow meter, the multi-position selector valve being moved to a first position at which to connect the source of gas under pressure to the gas flow meter, and the multi-position selector valve being moved to a second position at which to disconnect the source of gas under pressure from the gas flow meter.

Harris discloses a leak tester teaching valve 24 with a manual off-on button 26 shown in figures 1 through 4 which is a selector value located in a gas supply line between a source of gas under pressure and a differential pressure flow indicator, the selector valve being moved to a first position at which to connect the source of gas

under pressure to the gas flow meter, and the selector valve being moved to a second position at which to disconnect the source of gas under pressure from the gas flow meter as in the instant invention. (see column 5 lines 31-33, lines 61-64 and column 6 lines 25-29)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a valve with selective positions connecting and disconnecting the gas source from the flow meter so the operator may manually initiate and terminate the test with a push button.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles D. Garber whose telephone number is (571) 272-2194. The examiner can normally be reached on 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cdg

HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800